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7 IN THE UNITED STATES DISTRICT COURT
8 FOR THE DISTRICT OF OREGON
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10 GE PROPERTY & CASUALTY)
11 INSURANCE COMPANY,)
12 Plaintiff,)
13 v.)
14 PORTLAND COMMUNITY COLLEGE,)
15 Defendant.)

No. CV 04-727-HU

OPINION AND ORDER

16 GE PROPERTY & CASUALTY)
17 INSURANCE COMPANY,)
18 Third-Party Plaintiff,)
19 v.)
20 ST. PAUL FIRE & MARINE)
21 INSURANCE COMPANY and)
22 COMMERCIAL INSURANCE COMPANY)
OF NEWARK, NJ,)
Third-Party Defendants.)

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4 HUBEL, Magistrate Judge:

5 On August 24, 2005, the court entered an Opinion and Order
6 which, among other things, granted plaintiff's motion for partial
7 summary judgment on its duty to defend (doc. # 36) and denied
8 defendant GE's motion for summary judgment (doc. # 43) with respect
9 to the duty to defend. GE has now filed a motion to reconsider
10 (doc. # 69), based on two contentions. The first contention is that
11 the court erroneously found that GE's predecessor, Colonial Penn,
12 had issued two CGL policies to plaintiff, when in fact there was
13 only one policy; the record contained conflicting information about
14 whether Colonial Penn's policy was effective until July 1, 1985 or
15 until July 9, 1985. Plaintiff does not oppose GE's request that the
16 court amend its Opinion and Order to reflect that there is only one
17 policy, No. PEC 401225, effective until July 9, 1985. GE's motion
18 to amend the Opinion and Order to find that Colonial Penn issued
19 one CGL policy to PCC is GRANTED.

20 GE's second contention is that the court has misapplied the
21 language of the GE policy and Oregon law on GE's duty to defend,
22 because the Voluntary Agreement did not allege covered property
23 damage or seek damages as a result of covered property damage. I
24 have considered GE's arguments, but adhere to my original ruling.

25 An insurer has a duty to defend "if the allegations of the
26 complaint in the underlying action, without amendment and with
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1 ambiguities construed in favor of the insured, could impose
2 liability for the conduct covered by the policy." Ledford v.
3 Gutowski, 319 Or. 397, 399 (1994).

4 The record before the court showed that the Site contained
5 more than 20 underground injection control (UIC) drywells, designed
6 to collect storm water from the Site; the storm water collected by
7 the UIC drywells percolated into the groundwater. Opinion and
8 Order, p. 2. The Voluntary Agreement requested that PCC enter the
9 Voluntary Cleanup Program "due to the discovery of chlorinated
10 solvents in soil beneath two" of the UIC drywells. Id. at 4.

11 The work to be completed by PCC pursuant to the Voluntary
12 Agreement included a site investigation to determine whether the
13 contamination discovered in the soil under the UIC wells "[had] or
14 may cause significant impacts to beneficial uses of groundwater."
15 Id. PCC was ordered to submit an investigation work plan "designed
16 to identify the sources of contamination, the nature of
17 contamination, the extent of contamination (to include an initial
18 groundwater investigation near UICs # 4 and #33), contaminant
19 migration pathways, exposure pathways, likely receptors, and
20 potential hot spots of contamination." Id.

21 I interpret the language quoted above to mean that in the
22 Voluntary Agreement, DEQ alleged that contamination had been found
23 in the soil beneath two UICs, the purpose of which is to percolate
24 storm water to the groundwater, and that DEQ suspected groundwater
25 contamination was already present as a result. The Voluntary
26 Agreement must therefore be construed to mean that that DEQ is

1 ordering PCC to pay for the investigation necessary to find out, in
2 view of the confirmed existence of soil contamination beneath the
3 drywells, whether that contamination had already, or would
4 imminently, spread to the groundwater, which would require PCC to
5 pay for remediation of such groundwater contamination.

6 GE's motion for reconsideration (doc. # 69) is GRANTED. The
7 Opinion and Order entered on August 24, 2005, is amended at page 5,
8 line 19, to state: "GE's predecessor, Colonial Penn Insurance Co.,
9 provided CGL coverage to PCC from July 1, 1984 to July 9, 1985."
10 The following sentence is stricken: "GE also issued a CGL policy to
11 PCC effective July 1, 1984 to July 9, 1985."

12 The court has reconsidered the merits of the cross motions for
13 summary judgment, and adheres to its earlier ruling.

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15 IT IS SO ORDERED.

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17 Dated this 17th day of November, 2005.

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19 /s/ Dennis James Hubel

20 Dennis James Hubel
21 United States Magistrate Judge
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